

## **REMARKS**

The Office Action mailed November 4, 2008, has been received and carefully considered. The above amendments and the following remarks are being submitted as a full and complete response thereto.

Claims 1-4 and 7-23 are rejected. Claims 15 and 16 are amended. Claim 14 is cancelled. Thus, Claims 1-4, 7-13, and 15-23 are pending in this application. Support for the amendments may be found in the specification as originally filed. Applicant submits that no new matter is added. Applicant respectfully requests reconsideration and withdrawal of the rejections.

### **Claim Rejection - 35 U.S.C. §102**

Claims 1, 2, 3, 7, and 14-16 are rejected under 35 U.S.C. §102(b) as being anticipated by Favre (CH 688686, hereinafter "Favre"). Applicant respectfully traverses this rejection.

According to the Office Action, Favre discloses a capsule (Figure 2a) used to prepare an infused beverage such as coffee/espresso (2nd paragraph of the translation), comprising a first container (Figure 2a, item 71) containing a substance to be extracted or dissolved separate from the product contained in the main compartment (7). The product in the main compartment is to be dissolved. Favre discloses that the first container (71) comprises a side made of a membrane comprising holes which are further comprised of a mixture of fibers.

Favre further discloses a second container (Figure 2a, item 1) attached to the first container. Since the filter (42) which comprises the pod is made of a filter material, it is

considered substantially flexible. The second container is a cartridge and is made from either aluminum or plastic and therefore is considered substantially rigid. Favre further discloses a top of the capsule covered by a removable sheet of protective material (Figure 2a, item 41).

Applicant agrees with the Examiner in that the membrane shutter 41 is a removable sheet of protective material which covers the top of the capsule. This is also confirmed by Figure 2b of Favre.

According to the Examiner, this feature, namely the membrane shutter 41, anticipates the removable sheet of protective material which covers the top of the capsule claimed by present claim 1.

Favre discloses an upper compartment 71 formed between an inner membrane 42 and the membrane shutter 41 (Figure 2a and page 3, paragraph 5 of the translation).

Therefore it is clear from Favre that the membrane shutter 41 has two distinct functions, namely to define the compartment 71 and to define a removable cover for the capsule.

Thus, according to Favre once the membrane shutter 41 is removed from the capsule, the compartment 71 (understood as a closed compartment or a pod) ceases to exist.

Please note that present claim 1 requires both a removable sheet of protective material which covers the top of the capsule and a pod comprised in the first container. This means that present claim 1 requires a pod comprised in the first container also when the sheet of protective material is removed from the capsule.

From the above, it is evident that Favre fails to disclose that the top of the capsule is

covered by a removably sheet of protective material and that the first container comprises a pod made of filter paper or other similar filter material in the sense of present claim 1.

Thus present claim 1 is new over Favre.

Unpatentability of claims 2, 3, 7, and 14-16 is based on the fact that Favre anticipates claim 1 (from which claims 2, 3, 7, 15, and 16 depend).

Since as above explained amended claim 1 is new over Favre, the Examiner can not object to claims 2, 3, 7, 15, and 16 under 35 U.S.C. §102(b).

In view of the foregoing, reconsideration and withdrawal of the above rejections is respectfully requested.

#### **Claim Rejection - 35 U.S.C. §103**

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Favre in view of Brody (The Encyclopedia of Food Packaging Technology, hereinafter "Brody"). Applicant respectfully traverses this rejection.

Unpatentability of claim 4 is based on the fact that Favre anticipates claim 1 (from which claim 4 depends). Brody fails to cure the deficiency of Favre.

Since as above explained amended claim 1 is new over Favre, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 4 under 35 U.S.C. §103(a) over Favre in view of Brody.

Claims 7-10 and 15-16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Favre in view of Arkins et al. (U.S. Patent 6,116,782, hereinafter "Arkins"), Lagneaux (EP 0007876, hereinafter "Lagneaux"), and Cai (U.S. Patent Publication No.

2002/0078831, hereinafter "Cai '831"), and as further evidenced by Robichaud et al. (U.S. Patent No. 5,782,404, hereinafter "Robichaud"). Applicant respectfully traverses this rejection.

Unpatentability of claims 7-10 and 15-16 is based on the fact that Favre anticipates claim 1 (from which claims 7-10 and 15-16 depend). None of Arkins, Lagneaux, Cai '831 or Robichaud cure the deficiency of Favre.

Since as above explained amended claim 1 is new over Favre, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 7-10 and 15-16 under 35 U.S.C. §103(a) over Favre in view of Arkins, Lagneaux, and Cai '831, and as further evidenced by Robichaud.

Claims 10-13 and 17-21 are rejected under 35 U.S.C. §103(a) as being unpatentable over the references as applied to claims 7-10 and 15-16 above, and in further view of Cai (U.S. Patent No. 6,777,007, hereinafter Cai '007"), Harriss (U.S. Patent No. 2,965,501, hereinafter "Harriss"), Bernhardt (U.S. Patent No. 4,340,138, hereinafter "Bernhardt"), and Petrofsky et al. (U.S. Patent No. 5,045,333, hereinafter "Petrofsky"). Applicant respectfully traverses this rejection.

Unpatentability of claims 10-13 and 17-21 is based on the fact that Favre anticipates claim 1 (from which claims 10-13 and 17-21 depend). It should be noted that the teaching of Favre, namely the fact that once the membrane shutter 41 is removed from the capsule, the compartment 71 (understood as a closed compartment or a pod) ceases to exist, teaches away from combining the disclosed embodiment with any embodiment disclosing an upper container comprising a pod that continues to exist even when a removable sheet

of protective material is removed from the top of the capsule.

Since as above explained amended claim 1 is new over Favre, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 10-13 and 17-21 under 35 U.S.C. §103(a) as applied to claims 7-10 and 15-16 above, and in further view of Cai '007, Harriss, Bernhardt and Petrofsky.

Claim 22 is rejected under 35 U.S.C. §103(a) as being unpatentable over the references as applied to claims 7-10 and 15-16 above, and in further view of Cai '007, Harris, Bernhardt, and Petrofsky.

According to the Examiner claim 22 is rejected for the same reasons given in connection to claim 10. As above explained claim 10 can not be objected to under 35 U.S.C. §103(a), therefore claim 22 can not be objected to under 35 U.S.C. §103(a).

Claim 23 is rejected under 35 U.S.C. §103(a) as being unpatentable over the references as applied to claims 7-10 and 15-16, above and in further view of Cai '007, Harris, Bernhardt, and Petrofsky.

According to the Examiner claim 23 is rejected for the same reasons given in connection to claim 10. As above explained claim 10 can not be objected to under 35 U.S.C. §103(a), therefore claim 23 can not be objected to under 35 U.S.C. §103(a).

In view of the foregoing, reconsideration and withdrawal of the above rejections is respectfully requested.

From the above, reconsideration and allowance of the present application is respectfully requested.

## Conclusion

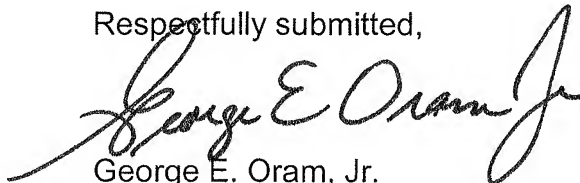
The prior art made of record but not applied by the Examiner has been carefully considered but is submitted to be less relevant than the references previously discussed.

All matters having been addressed above and in view of the pending claims and remarks, Applicant respectfully requests the entry of this Amendment, the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

Applicant's counsel remains ready to assist the Examiner in any way to facilitate and expedite the prosecution of this application.

In the event that this paper is not being timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account Number 01-2300, referencing Docket Number 023349-00298.

Respectfully submitted,



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